



Customer No.: 26308

*Patent*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Reiley et al

Attorney Docket No.: 1759.2570-CIP4 Con

Serial No.: 09/884,365

Examiner: J. Woo

Filed: June 19, 2001

Group Art Unit: 3731

Title: A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450



26308

PATENT TRADEMARK OFFICE

Dear Sir:

The Examiner's attention is directed to the attached Supplemental Information Disclosure Statement. The Statement lists documents that have been brought to the attention of the applicant by a third party in the course of infringement litigation involving Scholten US 5,108,404 (of record in this application) and US 4,969,888 (listed in a previous Information Disclosure Statement and having the same disclosure as US 5,108,404); Reiley et al US 6,235,043 (listed in a previous Information Disclosure Statement and as to which the instant case claims CIP status from the parent application 08/188,224 (Now Abandoned)); and Reiley et al US 6,248,110 (listed in a previous Supplemental Information Disclosure Statement and as to which the instant case claims CIP status from the parent application 08/188,224 (Now Abandoned)).

These documents (listed in the attached Supplemental Information Disclosure Statement) are:

US Patent Documents

US 4,653,489 (listed in a previous Information Disclosure Statement)	US 4,369,772 (listed in a previous Information Disclosure Statement)	US 4,432,358 (listed in a previous Information Disclosure Statement)	US 3,997,138 (listed in a previous Information Disclosure Statement)
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US 4,772,287 (listed in a previous Information Disclosure Statement)	US 3,626,949 (listed in a previous Information Disclosure Statement)	US 5,127,912 (listed in a previous Information Disclosure Statement)	US 4,987,892 (listed in a previous Information Disclosure Statement)
US 4,878,495	US 4,909,252	US 5,049,132	

#### Non-Patent Documents

Kunec, J.R., et al., Closed Intramedullary Rodding of Pathologic Fractures with Supplemental Cement, Clinical Orthopaedics and Related Research, vol. 188, pp. 183-86 (Sept. 1984) (listed in a previous Information Disclosure Statement).
Aebi, M., "The Internal Skeletal Fixation System. A New Treatment of Thoracolumbar Fractures and Other Spinal Disorders," Clin. Orthop., Vol 227, pp. 30-43 (1988)
Blauth, M., "Therapeutic Concept and Result of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: the Hannover Experience," J. of Orthop. Trauma, Vol 1, No. 3, pp. 240-52 (1987)
Campbells' Operative Orthopaedics, A.H. Crenshaw, Ed., 7 <sup>th</sup> ed., Chapter 44, pp. 1653-63 (1987)
Carlson, "The Use of Methylmethacrylate in Repair of Neoplastic Lesions in Bone," Radiology, Vol. 112, pp. 43-46 (July 1974)
Daniaux, H., "Technik und Ergebnisse der Transpedikularen Spongiosaplastik Bei Kompressionsbrüchen im Lendenwirbelsäulenbereich," Acta Chir. Austr. (Suppl.), Vol 43, pp. 79-80 (1982) (with English Translation)
Daniaux, H., "Transpedikulare Reposition und erste Spongiosaplastik Bei Wirbelkörperbrüchen der Unteren Brust und Lendenwirbelsäule," Unfallchirurg, Vol 89, pp. 197-213 (1986) (with English Translation)
Dick, W., "Use of the Actebular Reamer to Harvest Autogenic Bone Graft Material: A Simple Method for Producing Bone Paste," Arch. Orthop. Trauma Surg., Vol 105, pp. 235-38 (1986)
Dick, W., "The 'Fixateur Interne' as Versatile Implant for Spine Surgery," Spine, Vol 12 (9), pp. 882-900 (1987)
Edelund, H. G., "Open Reduction of Central Compression Fractures of the Tibia Plateau," Acta Orthop. Scand., Vol 47, pp. 686-89 (1976)

Supplemental Information Disclosure Statement

Application Serial No. 09/884,365

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Kennedy, W., "Fracture of the Tibia Condyles: A Preliminary Report of Supplementary Fixation with Methylmethacrylate," Clin. Orthop., Vol 143, pp. 153-57 (1978)
Ma, Yuan-zhang, "Os Calsis Fracture Treated by Percutaneous Poking Reduction and Internal Fixation," Chinese Medical J., Vol 97, No 2, pp. 105-10 (1984)
Olerud, S., "Transpedicular Fixation of Toracolumbar Vertebral Fractures," Clin. Orthop., Vol 227, pp. 44-51 (1988)
Pentelenyi, T., "First Hungarian Neurosurgical Experiences with 'Fixateur Interne' in the Treatment of Thoraco-Lumbar Spine Injuries," Acta Neurochir. (Wien), Vol 93, pp. 104-09 (1988)
Schatzker, J., Operative Orthopaedics, M. Chapman, Ed., 1 <sup>st</sup> ed., Ch. 35, pp. 421-34 (1988)
Scoville, W., "The Use of Acrylic Plastic for Vertebral Replacement or Fixation in Mestastic Disease of the Spine," J. Neurosurg., Vol. 27: 274-79 (Sept. 1967)

These documents do not teach or suggest the subject matter defined in the claims.

Respectfully Submitted,

By

Daniel D. Ryan, Reg. No. 29,243

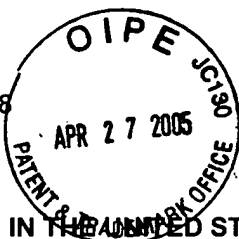
RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226

(262) 783 - 1300

Customer No.: 26308



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Reiley et al. Group Art Unit: 3731  
 Serial No: 09/884,365 Examiner: J. Woo  
 Filed: 10 June 2003  
 For: A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone

Mail Stop Amendment  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT BEFORE MAILING DATE  
 OF EITHER A FINAL ACTION OR NOTICE OF ALLOWANCE (37 CFR 1.97(c))**

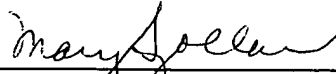
- NOTE:** "An information disclosure statement shall be considered by the Office if filed ... before the mailing date of either (1) a final action under S 1.113 or (2) a notice of allowance under S 1.311, whichever occurs first, provided the statement is accompanied by either a certification as specified in paragraph (e) of this section or the fee set forth in S 1.17(p)." 37 CFR 1.97(c).
- NOTE:** "If a final action or notice of allowance is mailed in an application and later withdrawn, the application will be considered as not having had a final action or notice of allowance mailed for purposes of considering an information disclosure statement." Notice of April 20, 1992 (1138 O.G. 37-41, 39).
- NOTE:** "If information submitted during the period set forth in 37 CFR 1.97(c) with a certification is used in a new ground of rejection on unamended claims, the next Office action will not be made final since in this situation it is clear that applicant has submitted the information to the office promptly after it has become known and the information is being submitted prior to a final determination on patentability by the Office. However, the information submitted with a certification can be used in a new ground of rejection and the next Office action made final, [i]f the new ground of rejection was necessitated by amendment of the application by applicant. Where the information is submitted during this period with a fee, the examiner may use the information submitted, e.g., printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP 706.07(a). If a new ground of rejection is introduced that is neither necessitated by an amendment to the claims nor based on the information submitted with the fee set forth in 37 CFR 1.17(p), the Office action shall not be made final." Notice of April 20, 1992 (1138 O.G. 37-41, 39).
- WARNING:** "A PETITION FOR SUSPENSION OF ACTION TO ALLOW APPLICANT TIME TO SUBMIT AN INFORMATION DISCLOSURE STATEMENT WILL BE DENIED AS FAILING TO PRESENT GOOD AND SUFFICIENT REASONS, SINCE 37 CFR 1.97 PROVIDES ADEQUATE RECOURSE FOR THE TIMELY SUBMISSION OF PRIOR ART FOR CONSIDERATION BY THE EXAMINER." NOTICE OF JULY 6, 1992 (1141 O.G. 63).

**TIME OF TRANSMITTAL OF ACCOMPANYING INFORMATION  
 DISCLOSURE STATEMENT**

1. The information disclosure statement transmitted herewith is being filed AFTER THREE MONTHS OF THE FILING DATE OF THIS NATIONAL APPLICATION OR THE DATE OF ENTRY OF THE NATIONAL STAGE AS SET FORTH IN S 1.491 IN AN INTERNATIONAL APPLICATION OR AFTER THE MAILING DATE OF THE FIRST OFFICE ACTION ON THE MERITS, WHICHEVER EVENT OCCURRED LAST BUT BEFORE THE MAILING DATE OF EITHER:
  - (1) a final action under § 1.113 or
  - (2) a notice of allowance under § 1.311, whichever occurs first.

**CERTIFICATE OF MAILING (37 CFR 1.8a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, with sufficient postage, in an envelope addressed as follows: Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on 25 April 2005.

  
 \_\_\_\_\_  
 Signature of Person Signing

Mary Szollar  
 \_\_\_\_\_  
 Type or Print Name of Person Signing

## CERTIFICATION OR FEE

2. Accompanying this transmittal is  
(check either A or B below)
- A. ☐ a certification as specified in 37 CFR 1.97(e)  
OR
- B. ☒ the fee set forth in 37 CFR 1.17(p) for submission of an information disclosure statement under S 1.97(c). (\$180.00).

## FEE PAYMENT

(complete this item, if applicable)

3. Applicant elects the option to pay the fee set forth in 37 CFR 1.17(p) for submission of an information disclosure statement under S 1.97(c) (\$180.00).

Fee due \$ 180.00

## METHOD OF PAYMENT OF FEE

4. ☒ Attached is check in the amount of \$ 180.00
- ☐ Charge Account No.      in the amount of \$                       
A duplicate of this request is attached.

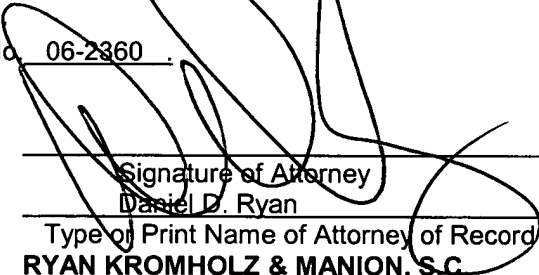
The submission of any document herewith is not intended as an admission that such document constitutes prior art against the claims of the present application or that such document is considered material to patentability as defined in 37 CFR §1.56(b). Applicant does not waive any rights to take any action which would be appropriate to antedate or otherwise remove as a competent reference any document which is determined to be a *prima facie* prior art reference against the claims of the present application.

If any additional fees are due, please charge Account No. 06-2860

Reg. No. 29,243

Telephone No.: (262) 783 - 1300

Customer No. 26308

  
\_\_\_\_\_  
Signature of Attorney  
Daniel D. Ryan  
\_\_\_\_\_  
Type or Print Name of Attorney of Record  
**RYAN KROMHOLZ & MANION, S.C.**  
**Post Office Box 26618**  
**Milwaukee, Wisconsin 53226-0618**  
\_\_\_\_\_  
Mailing Address of Sender

<b>LIST OF PRIOR ART CITED BY APPLICANT</b> <i>(Use several sheets if necessary)</i>  CUSTOMER NO. 26308	ATTY DOCKET NO. 1759.2570-CIP 4 CON	SERIAL NO. 09/884,365
	APPLICANT Reiley et al.	
	FILING DATE June 19, 2001	GROUP 3731



### U.S. PATENT DOCUMENTS

Examiner Initial	DOCUMENT NUMBER	Date	Name	Class	Subclass	Filing Date (If Appropriate)
	3,626,949	14 Dec 71	Shute			
	3,997,138	14 Dec 76	Crock et al.			
	4,369,772	25 Jan 83	Miller			
	4,432,358	21 Feb 84	Fixel			
	4,653,489	31 Mar 87	Tronzo			
	4,772,287	20 Sep 88	Ray et al.al.			
	4,878,495	07 Nov 89	Grayzel			
	4,909,252	20 Mar 90	Goldberger			
	4,987,892	29 Jan 91	Krag et al.			
	5,049,132	17 Sep 91	Shaffer et al.			
	5,127,912	07 Jul 92	Ray et al.			

### FOREIGN PATENT DOCUMENTS

DOCUMENT NUMBER	DATE	COUNTRY	Class	Subclass	Translation Yes No

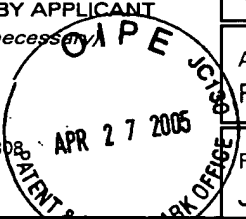
### OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)

			Kunec, J.R., et al., Closed Intramedullary Rodding of Pathologic Fractures with Supplemental Cement, Clinical Orthopaedics and Related Research, vol. 188, pp. 183-86 (Sep. 1984)
			Aebi, M., "The Internal Skeletal Fixation System. A New Treatment of Thoracolumbar Fractures and Other Spinal Disorders," Clin. Orthop., Vol 227, pp. 30-43 (1988)
			Blauth, M., "Therapeutic Concept and Result of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: the Hannover Experience," J. of Orthop. Trauma, Vol 1, No. 3, pp. 240-52 (1987)

EXAMINER	DATE CONSIDERED
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EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through and not considered. Include copy of this of with next communication to applicant.
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<b>LIST OF PRIOR ART CITED BY APPLICANT</b> <i>(Use several sheets if necessary)</i>	ATTY DOCKET NO. 1759.2570-CIP 4 CON	SERIAL NO. 09/884,365
	APPLICANT Reiley et al.	
	FILING DATE June 19, 2001	GROUP 3731

CUSTOMER NO. 26308
 

P. 2

**OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)**

		Campbells' Operative Orthopaedics, A.H. Crenshaw, Ed., 7 <sup>th</sup> ed., Chapter 44, pp. 1653-63 (1987)
		Carlson, "The Use of Methylmethacrylate in Repair of Neoplastic Lesions in Bone," Radiology, Vol. 112, pp. 43-46 (July 1974)
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		Dick, W., "Use of the Actebular Reamer to Harvest Autogenic Bone Graft Material: A Simple Method for Producing Bone Paste," Arch. Orthop. Trauma Surg., Vol 105, pp. 234-38 (1986)
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